

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

Criminal

Case No. 20/1135 SC/CRML

PUBLIC PROSECUTOR

v

CLIFFSON RIHAE

Date: 13 August 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr P. Sarai
Defendant – Mr H. Vira

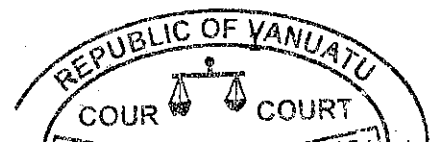
SENTENCE

A. Introduction

1. Mr Rihae pleaded guilty to one representative charge of sexual intercourse without consent. The maximum sentence is life imprisonment.

B. Facts

2. Mr Rihae was the de facto partner of the complainant Ms J. At the time of the offending, they resided together at Malapoa Estate in Port Vila.
3. Sometime in 2018, at Malapoa Estate, Mr Rihae had sexual intercourse without consent with Ms J. On his return from work, he wanted to have sex with Ms J. She did not want to. He forced her and had sexual intercourse with her without her consent.
4. Also in 2018, Mr Rihae demanded sex with Ms J when she had her monthly menstrual period and had sex with her regardless of her experiencing her period. If Ms J did not feel in the mood to have sex, he accused her of having sex with someone else and swore at her. Mr Rihae at the time was having injections to enlarge his penis, which resulted in sex being very painful for Ms J. After sex, she walked around with pain in her vagina and genital area. At one point, their sexual intercourse due to Mr Rihae's penis enlargement was so painful, it resulted in her uterus (basket blong pikinini) collapsing into her vagina



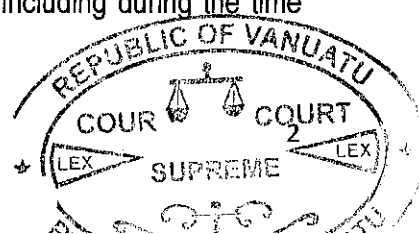
and she had to be rushed to a family member for massage to put her uterus back into place.

5. On 3 April 2020, Mr Rihae abused, harassed or intimidated Ms J when he told her, "Yu ko talem long olketa (Police) oli fakem ass blong u smol, yufala fakem yufala" ("Go tell the Police to fuck your arse a little, you all fuck yourselves"). Ms J felt hurt by his words.
6. Ms J reported the matter to the Police the same day. He was interviewed by the Police the following day. Mr Rihae pleaded guilty at the first opportunity after he had had time to consider the charges and obtain legal advice.

C. Sentence Start Point

7. The aggravating factors of the offending are:

- There has been a serious breach of trust. Ms J was Mr Rihae's de facto partner. He had a responsibility to care for and protect her. Moreover, the offending occurred within their home where she was entitled to feel and to be safe and secure.
- The sexual indignities and perversions the victim was subjected to, and the degree of violation – Mr Rihae demanded sex with Ms J when she had her period and had sexual intercourse with her then regardless of her experiencing her period. He had been getting injections to enlarge his penis which resulted in sexual intercourse being painful for Ms J. He had sex with her even when she did not consent, deriving pleasure from having sex with her with his abnormally large penis and while inflicting pain and injury on Ms J.
- The harm suffered by the victim – Ms J felt pain during the sexual intercourse with Mr Rihae due to his penis enlargement which resulted in her feeling pain during their sexual intercourse. After sex, she walked around with pain in her vagina and genital area. One episode of sexual intercourse was so painful as a result of Mr Rihae's penis enlargement that it resulted in Ms J's uterus collapsing into her vagina – it could be seen in her vaginal area. She had to be rushed to a family member for massage to manipulate her uterus back into place. Ms J was hurt by Mr Rihae's violent language to her and his swearing at her.
- The use of threats made in order to frighten the victim – Ms J felt hurt at the words said to her by Mr Rihae on 3 April 2020 when he used crude and sexually violent language to tell her what she should go and tell the Police. These words were not only abusive but also intimidated Ms J. She displayed courage to report the matter to the Police when she did particularly given that Mr Rihae's sexual abuse of her began in 2018.
- The sexual offending against Ms J was repeated, with multiple occurrences of sexual intercourse occurring without Ms J's consent including during the time when she had her monthly menstrual period.



- The offending was repeated and occurred over a two-year period of time from 2018 to April 2020.

8. There are no mitigating factors related to the offending.
9. I consider that the factors set out above require a sentence start point of 8 years imprisonment.

D. Deduction for Guilty Plea

10. Mr Rihae pleaded guilty at the first opportunity. He is entitled to a 25% deduction from the sentence start point (2 years) given the strength of the Prosecution case.

E. Personal Factors

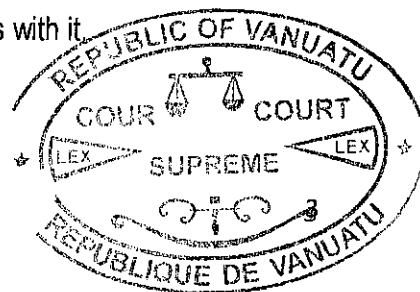
11. Mr Rihae is 36 years old. He is in a de facto relationship with the complainant and has one child. He has the support of his community with two chiefs from his community speaking in his support to the pre-sentence report writer. Mr Rihae has performed a kastom reconciliation ceremony with the complainant. It is unknown if the couple will choose to be together after this case however the chiefs' concern was to bring back peace between Mr Rihae and Ms J, particularly as they have a child together.
12. Mr Rihae has no previous convictions. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.
13. For his personal factors, I deduct a further 10% (7 months).

F. End Sentence

14. The sentencing principles applicable in this case are holding Mr Rihae accountable for his conduct, protecting the community, to denounce the criminal conduct, and to deter him and others from acting in this manner in future.
15. Taking all of those matters into account, the end sentence that must be imposed is 5 years 5 months imprisonment. The sentence is to commence from 28 July 2020 to take into account the 16 days that Mr Rihae has spent in custody.

G. Suspension

16. It is well settled that it will only be in the most extreme cases that a suspended sentence will ever be contemplated in a case of sexual abuse. It is inappropriate to suspend Mr Rihae's sentence. I decline to exercise my discretion.
17. Mr Rihae has 14 days to appeal this sentence if he disagrees with it.



18. The name and details leading to the identification of Ms J are permanently suppressed.

**DATED at Port Vila this 13th day of August 2020
BY THE COURT**

VM Trief
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Viran Molisa Trief
Judge

